

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

SAMUEL MAYO, §
§
Plaintiff, §
§
v. § CIVIL ACTION NO. H-12-3123
§
§
PASADENA POLICE §
DEPARTMENT, *et al.*, §
§
Defendants. §

ORDER

On April 8, 2013 this court entered a Memorandum and Order and Final Judgment dismissing the plaintiff's case with prejudice and without leave to amend under Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Docket Entries No. 23, 24). On May 10, 2013, the plaintiff filed a "motion to reinstate" his case, arguing that this court erred in failing to apply the proper limitations period to his claims and in stating that the plaintiff suffered some of the alleged abuse at the Harris County jail facility rather than the City of Pasadena jail facility. The plaintiff also argued failures to comply with Texas state-law procedural rules. (Docket Entry No. 26). The defendants responded. (Docket Entry No. 25, 27).

This court considers the plaintiffs' motion as one for relief from a judgment or order under Rule 60 of the Federal Rules of Civil Procedure. The motion was filed more than 28 days after final judgment was entered. The motion will not be granted because the plaintiff has not shown that he is entitled to relief. This court already considered and rejected his limitations arguments. The factual discrepancy about the jail facilities does not affect the limitations analysis. The procedural rules that apply to the courts of the State of Texas did not apply here to provide a basis for relief.

The Texas provision the plaintiff primarily relies on, Rule 165a of the Texas Rules of Civil Procedure, deals with dismissal for want of prosecution. This court did not dismiss the plaintiff's claim for want of prosecution. Instead, this court dismissed the plaintiff's claims because his complaint, as amended, failed to state viable claims for which relief could be granted. Fed. R. Civ. P. 12(b)(6).

The plaintiff has not presented new facts or law that would justify relief from this court's ruling. The plaintiff's motion, (Docket Entry No. 26), is denied.

SIGNED on May 28, 2013, at Houston, Texas.



Lee H. Rosenthal
United States District Judge